

Senate File 2333 - Introduced

SENATE FILE 2333
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 3103)

A BILL FOR

1 An Act relating to health care facilities and programs,
2 including hospital inspector requirements and dependent
3 adult abuse.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135B.9, Code 2009, is amended to read as
2 follows:

3 **135B.9 Inspections and qualifications for hospital**
4 **inspectors — protection and advocacy agency investigations.**

5 1. The department shall make or cause to be made inspections
6 as it deems necessary in order to determine compliance with
7 applicable rules. Hospital inspectors shall meet the following
8 qualifications:

9 a. Be free of conflicts of interest. A hospital
10 inspector shall not participate in an inspection or complaint
11 investigation of a hospital in which the inspector or a member
12 of the inspector's immediate family works or has worked within
13 the last two years. For purposes of this paragraph, "immediate
14 family member" means a spouse; natural or adoptive parent,
15 child, or sibling; or stepparent, stepchild, or stepsibling.

16 b. Complete a yearly conflict of interest disclosure
17 statement.

18 c. Biennially, complete a minimum of ten hours of continuing
19 education pertaining to hospital operations including but not
20 limited to quality and process improvement standards, trauma
21 system standards, and regulatory requirements.

22 2. In the state resource centers and state mental health
23 institutes operated by the department of human services, the
24 designated protection and advocacy agency as provided in
25 section 135C.2, subsection 4, shall have the authority to
26 investigate all complaints of abuse and neglect of persons
27 with developmental disabilities or mental illnesses if the
28 complaints are reported to the protection and advocacy agency
29 or if there is probable cause to believe that the abuse has
30 occurred. Such authority shall include the examination of all
31 records pertaining to the care provided to the residents and
32 contact or interview with any resident, employee, or any other
33 person who might have knowledge about the operation of the
34 institution.

35 Sec. 2. Section 235E.2, subsection 12, Code Supplement

1 2009, is amended to read as follows:

2 12. An inspector of the department may enter any facility
3 or program without a warrant and may examine all records
4 pertaining to residents, employees, former employees, and
5 the alleged dependent adult abuser as long as the inspector
6 informs the person in charge of the facility or program, or
7 the person's designee, that the inspector is investigating an
8 alleged case of dependent adult abuse. If upon entry, the
9 inspector has knowledge of or learns during the course of an
10 investigation that alleged dependent adult abuse is suspected
11 or is being investigated, the inspector shall inform the person
12 in charge that the inspector is investigating an alleged case
13 of dependent adult abuse. An inspector of the department may
14 contact or interview any resident, employee, former employee,
15 or any other person who might have knowledge about the alleged
16 dependent adult abuse. The department shall inform a person
17 under suspicion of dependent adult abuse of that suspicion and
18 the criminal consequences of a determination by the department
19 that the dependent adult abuse is founded and offer such person
20 the opportunity to have legal counsel and other representatives
21 present during the interview. An inspector may take or cause
22 to be taken photographs of the dependent adult abuse victim and
23 the vicinity involved. The department shall obtain consent
24 from the dependent adult abuse victim or guardian or other
25 person with a power of attorney over the dependent adult abuse
26 victim prior to taking photographs of the dependent adult abuse
27 victim.

28 Sec. 3. Section 235E.2, Code Supplement 2009, is amended by
29 adding the following new subsection:

30 NEW SUBSECTION. 14. When a caretaker in a facility or
31 program is accused of dependent adult abuse, the department has
32 reason to believe that dependent adult abuse has occurred, and
33 the caretaker wishes to appeal this determination, all of the
34 following shall occur before the caretaker's name is listed on
35 the dependent adult abuse registry:

1 *a.* The caretaker shall have the right to an emergency
2 adjudicative proceeding pursuant to section 17A.18A before
3 an administrative law judge to determine whether the
4 caretaker shall be allowed to continue employment in the
5 facility or program or whether the caretaker may be placed
6 on administrative leave while waiting for a contested case
7 hearing pursuant to section 17A.12. The emergency adjudicative
8 proceeding shall take place within five business days of the
9 department's allegation that dependent adult abuse occurred.

10 *b.* The administrative law judge shall determine if
11 the caretaker shall be allowed to continue employment in
12 the facility or program. If the administrative law judge
13 determines the caretaker should be allowed to continue
14 employment in the facility or program pending the outcome of
15 the contested case hearing, the facility or program shall
16 have the option of placing the caretaker on administrative
17 leave. The facility or program shall also have the option of
18 determining in what capacity the caretaker will remain employed
19 in the event the facility or program allows the caretaker to
20 return to work. If the administrative law judge determines
21 that the caretaker shall not continue employment, the caretaker
22 may be placed on administrative leave.

23 *c.* A contested case hearing on whether dependent adult
24 abuse occurred shall take place within forty-five days of the
25 informal hearing in the manner provided by section 17A.12,
26 unless the time period is waived by the caretaker.

27 *d.* Nothing in this section shall be construed to prohibit
28 an employer from terminating an employee at any time for a
29 reason other than because the employee has been listed on the
30 dependent adult abuse registry.

31

EXPLANATION

32 This bill provides for certain requirements for health
33 care facilities and programs including hospitals. The
34 bill establishes explicit qualifications for persons who
35 inspect hospitals. Inspectors must have been employed in a

1 hospital, be free of conflicts of interest, and obtain biennial
2 continuing education.

3 The bill provides that, with respect to dependent adult
4 abuse reports in programs and facilities, an inspector of the
5 department of inspections and appeals may enter any facility
6 or program without a warrant and may examine all records
7 pertaining to residents, employees, former employees, and
8 the alleged dependent adult abuser if the inspector informs
9 the person in charge of the facility or program that the
10 inspector is investigating an alleged case of dependent adult
11 abuse. If upon entry, the inspector knows or learns during the
12 investigation that alleged dependent adult abuse is suspected
13 or is being investigated, the inspector is also required to
14 provide that information to the program or facility. In
15 addition, the department is required to inform a person
16 suspected of dependent adult abuse of that suspicion and inform
17 the person about the criminal consequences of a determination
18 that dependent adult abuse is founded and offer the opportunity
19 for the person to have legal counsel and other representatives
20 present during the interview.

21 The bill provides an administrative review process for a
22 caretaker in a facility or program who is accused of dependent
23 adult abuse. The caretaker shall have the right to an
24 emergency adjudicative proceeding pursuant to Code section
25 17A.18A before an administrative law judge to determine if
26 the caretaker shall be allowed to continue employment in
27 the facility or program. If the administrative law judge
28 determines the caretaker should be allowed to continue
29 employment pending the outcome of the contested case hearing,
30 the facility or program shall have the option of placing the
31 caretaker on administrative leave and of determining in what
32 capacity the caretaker will remain employed in the event the
33 caretaker returns to work. If the administrative law judge
34 determines that the caretaker shall not be allowed to continue
35 employment in the facility or program, the caretaker may be

1 placed on administrative leave. A contested case hearing on
2 whether dependent adult abuse occurred is required to be held
3 within 45 days of the emergency adjudicative proceeding in the
4 manner provided by Code section 17A.12 unless the time period
5 is waived by the caretaker.